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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,628

10/25/2003

Adnan Shennib

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

2615

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/693,628	Applicant(s) SHENNIB ET AL.	
	Examiner HUYEN D. LE	Art Unit 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,37,45,49,98-105,111,114-121 and 123 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,37,45,49,98-105,111,114-121 and 123 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 4, 37, 45, 49, 98-105, 111, 114-121 and 123 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 6,940,988. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claiming the semi-permanent hearing device that comprises a sealing retainer, a receiver assembly, a microphone assembly, a battery assembly, a flexible connector or transducer means. The limitations in claims 1-49 of U.S. patent No. 6,940,988 cover the limitations of claims 1, 3, 4, 37, 45, 49, 98-105, 111, 114-121 and 123 in the present invention.

Claim Rejections - 35 USC § 112

2. Regarding claims 37 and 118-119, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 37, 45, 49, 98-100, 111, 116-121 and 123 are rejected under 35 U.S.C.

102(e) as being anticipated by Shennib et al. (U.S. patent 5,701,438).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C.

102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1 and 3, Shennib teaches a hearing device that comprises a sealing retainer (43, 70, 190) adapted to be retained in the bony portion of the wearer's ear canal, a receiver assembly (40, 41, 42, 161, 173) including a receiver, a microphone assembly (14, 162)

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adapted to be positioned medially past the aperture of the ear canal (figures 4, 30), a battery assembly (15, 16), and a flexible connector (46, 50, 51, 52, 53, 57, 58, 59, 120). As shown in the drawings, the hearing device is adapted to be inserted entirely within the wearer's ear canal medially past the aperture thereof for a long-term wear with the battery assembly.

Regarding claim 37, Shennib teaches the compressible material for the sealing retainer as claimed (col. 9, lines 30-32 and lines 61-63).

Regarding claim 45, as shown in disclosed, the sealing retainer is provided for an assortment of different sizes and shapes to accommodate the dimensions of the ear canal of the individual wearer (figures 3, 4, 11, 18, 32).

Regarding claim 49, Shennib shows the receiver assembly that is adapted to protrude medially beyond the contact area of the sealing retainer (figures 13, 14, 17, 18).

Regarding claims 98-99 and 120, Shennib teaches a hearing device that comprises a core assembly (see the microphone assembly, the connector and the receiver assembly in figures 3-5, 11-14, 18-20, 23 and 30-32) comprising transducer means (14, 40, 41, 42, 161, 162, 173) and a battery (15, 16), and a sealing retainer (43, 70, 190) adapted to be retained in the bony portion of the wearer's ear canal. As shown in the drawings, the core assembly includes a portion that is adapted to extend laterally and non-occluding within the ear canal medially past the aperture thereof when the hearing aid is fully seated in the ear canal (figures 3, 4, 5, 23, 30, 31).

Regarding claims 100 and 116 -119, Shennib teaches the material for the sealing retainer as claimed (col. 9, lines 30-32 and lines 61-63).

Regarding claim 111, Shennib shows the core assembly that comprises an air vent as claimed (18, 44).

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Regarding claims 121, as shown in disclosed, the sealing retainer is provided for an assortment of different sizes and shapes to accommodate the dimensions of the ear canal of the individual wearer (figures 3, 4, 11, 18, 32).

Regarding claim 123, Shennib shows the receiver assembly that is adapted to protrude medially beyond the contact area of the sealing retainer (figures 13, 14, 17, 18).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Adelman (U.S. patent 5,390,254) teaches a hearing aid to be inserted in the ear canal.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL
August 4, 2006



HUYEN LE
PRIMARY EXAMINER